



An
Bord
Pleanála

Inspector's Report

ABP-320176-24

Development	Construction of a house and garage and associated works.
Location	Killahane, Firies, Killarney, Co. Kerry
Planning Authority	Kerry County Council
Planning Authority Reg. Ref.	24175
Applicant(s)	Ross and Dierdre Lewis.
Type of Application	Permission.
Planning Authority Decision	Refuse Permission
Type of Appeal	First Party
Appellant(s)	Ross and Dierdre Lewis.
Observer(s)	None.
Date of Site Inspection	1 st November 2024.
Inspector	Oluwatosin Kehinde

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1.0 Site Location and Description

- 1.1. The 0.208Ha site is located in a rural area c.300m north east of Fieries Town. The site is located within a cluster of dwellings. Access to the site is off L7001 local road and the site is enclosed with vegetation on it.

2.0 Proposed Development

- 2.1. Planning permission is being sought for the construction of a house, garage and on-site effluent treatment system. The development also includes all associated site services.

3.0 Planning Authority Decision

3.1. Decision

Planning permission was refused by the Planning Authority (PA) by reason of housing need and wastewater treatment provisions

3.2. Planning Authority Reports

3.2.1. Planning Reports

- The decision to refuse permission by the PA was informed by the report from the Planning Officer (PO). The report dated 18th June 2024 considered the proposal in terms of housing need, residential amenity, traffic and services in the area. The PO Concluded that the applicant did not satisfy the requirements of the Rural Settlement Policy and the wastewater disposal provisions. Therefore, the PO recommended that the application be refused.

3.2.2. Other Technical Reports

- Site Assessment Unit (SAU) – Report dated 18th of June 2024 recommended further information on details relating to the proposed treatment system.

3.2.3. Refusal Reasons

- The Planning Authority is not satisfied on the basis of submission made in relation to the application, that a rural housing need has been demonstrated in

accordance with Objective KCDP 5-15, Rural Housing Policy of the Kerry County Development Plan 2022-2028 having regards to the location of the application site in an area designated as a Rural Area Under Urban Influence. The proposed development would therefore be contrary to the proper planning and sustainable development of the area.

- Based on the information submitted in relation to the application, the Planning Authority is not satisfied that the effluent arising from the proposed development could be adequately disposed off on site. The proposed development would, therefore, be prejudicial to public health. Therefore, the proposed development would be contrary to the proper planning and sustainable development of the area.

3.3. Prescribed Bodies

None received on file

3.4. Third Party Observations

None received

4.0 Planning History

PA Reg. Ref. 09/91047: Permission refused for an Extension of appropriate period in relation to Reg. 09/1047

PA Reg Ref. 09/1047: Permission granted for the construction of a dwelling house, garage and treatment system consequent of an outline permission

PA Reg Ref. 06/1900: Outline permission granted for a house, garage and treatment system.

5.0 Policy Context

5.1. Development Plan

The Kerry County Council Development Plan 2022-2028 is the statutory plan for the area. The site has a landscape designation of “Rural General” and also designated

as a “Rural Area Under Urban Influence” in the plan. Chapter 5 set out the policies required for the continued sustainable development of rural County Kerry based on the following important five principles:

- The specific land use requirements of agricultural activity will be accommodated as a first priority.
- A focus on supporting vibrant rural communities centred on a network of rural village settlements is a cross-cutting theme of this Plan.
- Rural Kerry is an important national and international tourism and heritage asset, and its environmental and socio-cultural assets will be protected.
- Encouragement and support for restoration and refurbishment of the existing built fabric in rural areas.
- The requirement to transition to a low carbon and climate resilient society, necessitates consideration of the spatial pattern of development focusing on elimination of unnecessary trips, more efficient use of resources and opportunities to provide centralised and communal public services.

Objective KCDP 5-15 states that

“In Rural Areas under Urban Influence applicants shall satisfy the Planning Authority that their proposal constitutes an exceptional rural generated housing need based on their social (including lifelong or life limiting) and / or economic links to a particular local rural area, and in this regard, must demonstrate that they comply with one of the following categories of housing need:

- a) Farmers, including their sons and daughters or a favoured niece/nephew where a farmer has no family of their own who wish to build a first home for their permanent residence on the family farm.
- b) Persons taking over the ownership and running of a farm on a full-time basis, who wish to build a first home on the farm for their permanent residence, where no existing dwelling is available for their own use. The proposed dwelling must be associated with the working and active management of the farm.

c) Other persons working full-time in farming or the marine sector for a period of over seven years, in the local rural area where they work and in which they propose to build a first home for their permanent residence.

d) Persons who have spent a substantial period of their lives (i.e., over seven years), living in the local rural area in which they propose to build a first home for their permanent residence.

e) Persons who have spent a substantial period of their lives (i.e., over seven years), living in the local rural area in which they propose to build a first home for their permanent occupation and currently live with a lifelong or life limiting condition and can clearly demonstrate that the need to live adjacent to immediate family is both necessary and beneficial in their endeavours to live a full and confident life whilst managing such a condition and can further demonstrate that the requirement to live in such a location will facilitate a necessary process of advanced care planning by the applicants immediate family who reside in close proximity.

Preference shall be given to renovation/restoration/alteration/extension of existing dwellings on the landholding before consideration to the construction of a new house.”

Volume 6 of the Kerry County Development Plan 2022-2028 contains development standards for residential development on rural and non-serviced sites

5.2. Natural Heritage Designations

Anna More Bog NHA is located approximately 8km east of the site. Castlemaine Harbour SAC is located approximately 5km south of the site. Castlemaine Harbour pNHA is located approximately 10km west of the site and Slieve Mish Mountains SAC is located approximately 6km north west of the site.

5.3. EIA Screening

- 5.3.1. Reference is had to Appendix 1- Form 1 (EIA Pre-Screening) and Form 2 (EIA Preliminary Examination) attached to this Report.

Having regard to the nature and scale of the proposed development and the absence of any connectivity to any sensitive location, there is no real likelihood of

significant effects on the environment arising from the proposed development. The need for environmental impact assessment can, therefore, be excluded at preliminary examination and a screening determination is not required.

6.0 The Appeal

6.1. Grounds of Appeal

- It is believed that that the reasons for refusal have been applied incorrectly and inappropriately by the PA.
- The appeal contends the PA's interpretation of Objective KCDP 5-15 (d) and states that the policy does not exclude persons who reside in rural villages, local to the area. That the policy is relevant to local persons within a geographical area.
- The first party appeal makes the case that the applicants are local to the area and have lived in Fieries Village for over 10years in rented accommodation. Documented evidence has been submitted to support their claims.
- The appeal notes the conclusion statement under Section 4.9 of the "Sustainable rural housing – guidelines for Planning Authorities – Rural Housing and Planning Applications" and states that the document reinforces the meaning of 'local area' in terms of parish, townland or the catchment of local schools and sporting clubs.
- The appellant notes Section 2.3 of the "Sustainable rural housing – guidelines for Planning Authorities – Rural Housing and Planning Applications" and acknowledges that the site to be within the vicinity a village.
- The appeal describes the site to be a derelict infill site immediately adjacent to road infrastructure and water supply.
- It is submitted that the Planning Officer (PO) incorrectly considered the housing need of the applicants under Objective KCDP 5-15 (d) in which the PO stated that the applicant resided within the urban boundaries of Fieries. The first party appeal argues that the statement was not relevant as the

objective required the persons to live in the local rural area, which in this instance includes the village of Fieries.

- It is submitted that the applicants have a social and economic need to live in the area and notes a similar ABP case that considered persons living in an urban area and still maintains the compliance with rural settlement location policies.
- It is submitted that the on-site effluent system is wholly in compliance with the EPA Code of Practice.
- The first party appeal states that, while the further information request by the PA Site Assessment Unit (SAU) was not issued, the applicants' requested for the report and have addressed the comments therein. It is concluded that the proposed treatment system complies with the EPA Code of Practice.
- The appeal also notes a PA Part 8 application with similar ground conditions and the recommendation made by the PA that an effluent system was appropriate on the site.

7.0 Assessment

7.1. Having examined the application details and all other documentation on file, including all of the submissions received in relation to the appeal, and inspected the site, and having regard to relevant local/regional/national policies and guidance, I consider that the main issues in this appeal are as follows:

- Compliance with the Rural Housing Strategy
- Waste Water Treatment System.

7.2. Compliance with the Rural Housing Strategy

7.2.1. The site is located in the rural area immediately outside the town of Fieries and located within a Rural area of Urban Influence as set out in the Kerry Development Plan 2022-2028. The development plan states that it is a key challenge in these areas to maintain a reasonable balance between development activity in the extensive network of smaller towns and villages and housing proposals in wider rural areas. The National Planning Framework also seeks, for rural areas under urban

influence to facilitate the provision of single housing in the countryside based on the core consideration of demonstrable economic or social need to live in a rural area.

- 7.2.2. Kerry County Development Plan 2022-2028 designates Fieries as a District Town and the town's boundary is established under the Killarney Municipal District Local Area Plan (LAP) 2018-2024. The appeal site is approximately 300m outside Fieries town. Objective KCDP 5-15 of the development plan requires the applicants to demonstrate that they comply with one of the categories of housing need. From the documentation submitted with the appeal, KCDP 5-15 (d) would be the criteria applicable to the applicants and relates to "persons who have spent a substantial period of their lives (i.e., over seven years), living in the local rural area in which they propose to build a first home for their permanent residence".
- 7.2.3. The appeal submits that the applicants reside within the town of Fieries and stated that the site is within the vicinity of Fieries. Having regard to the LAP, the development of Fieries has been compact and has occurred largely within the historic core and extending out. The town is well established as a sustainable location where local facilities and amenities are within walking distances. The Council seeks to facilitate more community facilities and infrastructure in the town for existing and future residents. The appeal site is located outside the town boundaries of Fieries, therefore I consider that the development of a one-off dwelling on this rural site in such close proximity to the town of Fieries to be contrary to the proper planning and sustainable development of the area.
- 7.2.4. From the documentation submitted, the applicants have lived in a rented accommodation for over seven years and have links with the town. I consider that the applicants have not demonstrated housing need for a rural area in accordance with the Kerry County Council rural settlement strategy. I note that the Planning Officer's (PO) report concluded that KCDP 5-15 (d) did not apply to the applicants as they resided within the urban boundaries of Fieries. I agree with the Planning Officer's assertion that KCDP 5-15 (d) does not apply to the applicants because their links are with the town of Fieries. As the site is outside the town boundaries and designated as a Rural Area of Urban Influence, the applicants have not satisfied the rural generated housing need for a site in a rural area.

7.2.5. Having considered the above, the applicants have failed to demonstrate that the proposed development constitutes a rural generated housing need based on social and/or economic links to the particular rural area with regard to the criteria set out in Objective KCDP 5-15. Furthermore, the proposal is considered contrary to the provisions of National Planning Objective 19 of the National Planning Framework (NPF) which seeks to facilitate the provision of single housing in the countryside in areas under urban influence based on the core consideration of demonstrable economic or social need having regard to the viability of smaller towns and rural settlements. Refusal of permission is recommended on this basis.

7.3. Waste Water Treatment System.

- 7.3.1. In terms site suitability for a wastewater treatment system, the Board will note that the applicants submitted a completed Site Characterisation Form prepared by TEICNIUL-PRIORY Consulting Engineers. The development includes the provision of a proprietary sewage treatment system and raised sand polishing filter and gravel layer. The Site Characterisation Form submitted with the application identifies the category of aquifer as 'Locally Important (LI)', with a vulnerability classification of 'Extreme'. Table E1 (Response Matrix for DWWTSs) of the EPA Code of Practice Domestic Wastewater Treatment Systems identifies an 'R2¹' response category i.e., acceptable subject to normal good practice.
- 7.3.2. The Site Characterisation Form indicates that a trial hole with a depth of 1.15m recorded 300mm of gravelly silt and 700mm of gravelly silt, substantial cobble contact with fractured bedrock. Bedrock was encountered at 1.1m below ground level. I note in the PA refused permission based on the lack of information provided by the applicant in relation to the Site Characterisation Form. The applicant has submitted a revised form with the appeal and in relation to the percolation characteristics of the soil, a surface percolation test result of 8.11 min/25mm was returned. A sub-surface percolation test result of 7.53min/25mm was returned.
- 7.3.3. The Site Characterisation Form concludes that the site is suitable for the installation of a secondary or tertiary treatment system and it is proposed carry out site improvement works to install a raised mound soil polishing filter over imported soil. There will be a minimum depth of 900mm over the fractured bedrock layer.

7.3.4. Having regard to the 2021 EPA Code of Practice for domestic waste water treatment systems and the site percolation test results, I consider that it has been demonstrated that the site can accommodate a wastewater treatment system. I note the Planning Authority's Site Assessment Unit sought further information regarding aspects of the site's suitability, which the applicant has provided as part of the appeal. Should the Board decide to grant permission, I recommend a condition be attached requiring the applicants to agree detailed specification of the on-site wastewater treatment system with the Planning Authority. The site appears capable of accommodating the development in the context of wastewater treatment and disposal, if permitted, the development is unlikely to result in a public health hazard or impact on the quality of ground or surface waters in the area.

8.0 AA Screening

8.1. Having regard to the nature and scale of the proposed development, the receiving environment, the separation distances, and the absence of any pathway to European sites, it can be concluded that the development, alone or in-combination with other plans or projects, would not give rise to any significant effects on any European site. As such, there is no requirement for a Natura Impact Statement in this case.

9.0 Recommendation

9.1. It is recommended that permission be refused for the reason set out below

10.0 Reasons and Considerations

10.1. Having regard to the location of the site within Rural Area Under Urban Influence as identified in Sustainable Rural Housing Guidelines for Planning Authorities issued by the Department of the Environment, Heritage and Local Government in April 2005 and in an area where housing is restricted to persons demonstrating local need in accordance with the Kerry County Council Development Plan 2022-2028, it is considered that the applicant does not come within the scope of the housing need criteria as set out in the Guidelines or the Development Plan for a house at this location. The proposed development, in the absence of any identified locally based need for the house, would contribute to the encroachment of random rural

development in the area and would militate against the preservation of the rural environment and the efficient provision of public services and infrastructure. The proposed development would, therefore, be contrary to the proper planning and sustainable development of the area.

I confirm that this report represents my professional planning assessment, judgement and opinion on the matter assigned to me and that no person has influenced or sought to influence, directly or indirectly, the exercise of my professional judgement in an improper or inappropriate way.

Oluwatosin Kehinde
Senior Planning Inspector

19th December 2024

Appendix 1 - Form 1

EIA Pre-Screening

An Bord Pleanála			
Case Reference	320176-24		
Proposed Development Summary	Permission for house, garage and on-site effluent treatment system		
Development Address	Killahane, Fieries, Killarney, Co. Kerry		
1. Does the proposed development come within the definition of a 'project' for the purposes of EIA? (that is involving construction works, demolition, or interventions in the natural surroundings)		Yes	<input checked="" type="checkbox"/>
		No	
2. Is the proposed development of a CLASS specified in Part 1 or Part 2, Schedule 5, Planning and Development Regulations 2001 (as amended)?			
Yes	<input checked="" type="checkbox"/>	Schedule 5 Part 2 Class 10 (b) (i) construction of more than 500 dwelling units	Proceed to Q3.
No			
3. Does the proposed development equal or exceed any relevant THRESHOLD set out in the relevant Class?			
Yes			EIA Mandatory EIAR required
No	<input checked="" type="checkbox"/>		Proceed to Q4
4. Is the proposed development below the relevant threshold for the Class of development [sub-threshold development]?			
Yes	<input checked="" type="checkbox"/>		Preliminary examination required (Form 2)
5. Has Schedule 7A information been submitted?			

No	X	Screening determination remains as above (Q1 to Q4)
Yes		Screening Determination required

Form 2

EIA Preliminary Examination

An Bord Pleanála Case Reference Number	ABP- 320176-24
Proposed Development Summary	Permission for house, garage and on-site effluent treatment system
Development Address	Killahane, Fieries, Killarney, Co. Kerry
<p>The Board carried out a preliminary examination [ref. Art. 109(2)(a), Planning and Development regulations 2001, as amended] of at least the nature, size or location of the proposed development, having regard to the criteria set out in Schedule 7 of the Regulations.</p> <p>This preliminary examination should be read with, and in the light of, the rest of the Inspector's Report attached herewith.</p>	
Characteristics of proposed development (In particular, the size, design, cumulation with existing/proposed development, nature of demolition works, use of natural resources, production of waste, pollution and nuisance, risk of accidents/disasters and to human health).	Briefly comment on the key characteristics of the development, having regard to the criteria listed. <p>The development is for a one and a half storey house, garage and proprietary effluent system in a rural area and comes forward as a standalone project.</p> <p>The development does not require demolition works, does not require the use of substantial natural resources, or give rise to significant risk of pollution or nuisance. The development, by virtue of its type, does not pose a risk of major accident and/or disaster, or is vulnerable to climate change. It presents no risks to human health.</p>
Location of development (The environmental sensitivity of geographical areas likely to be affected by the development in particular existing and approved land use, abundance/capacity of natural resources, absorption capacity of natural environment e.g. wetland, coastal zones, nature reserves, European sites, densely populated areas,	Briefly comment on the location of the development, having regard to the criteria listed <p>The development is situated in a rural area of urban influence. The development is in a rural setting that is removed from sensitive natural habitats and designated sites and</p>

landscapes, sites of historic, cultural or archaeological significance).	landscapes of identified significance in the Kerry County Development Plan.	
Types and characteristics of potential impacts (Likely significant effects on environmental parameters, magnitude and spatial extent, nature of impact, transboundary, intensity and complexity, duration, cumulative effects and opportunities for mitigation).	Having regard to the characteristics of the development and the sensitivity of its location, consider the potential for SIGNIFICANT effects, not just effects. Having regard to the nature of the development, its location removed from sensitive habitats/features, likely limited magnitude and spatial extent of effects, and absence of in combination effects, there is no potential for significant effects on the environmental factors listed in section 171A of the Act.	
Conclusion		
Likelihood of Significant Effects	Conclusion in respect of EIA	Yes or No
There is no real likelihood of significant effects on the environment.	EIA is not required.	Yes
There is significant and realistic doubt regarding the likelihood of significant effects on the environment.	Schedule 7A Information required to enable a Screening Determination to be carried out.	No
There is a real likelihood of significant effects on the environment.	EIAR required.	No

Inspector: Oluwatosin Kehinde

Date: 19th December 2024